



STATE OF DELAWARE
DIVISION OF ENERGY & CLIMATE
100 W. WATER STREET
SUITE 5A
DOVER, DELAWARE 19904

Department of Natural Resources
And Environmental Control

www.DNREC.delaware.gov/energy
Phone: (302) 735-3480

MEMORANDUM

TO: Shawn M. Garvin, Secretary

THRU: Susan E. Love, AICP, Climate & Sustainability Section Lead

FROM: Kevin F. Coyle, AICP CEP, Principal Planner *KFC*

RE: Recommended CZA Status Decision for Linde, LLC

DATE: May 22, 2017

Introduction

Linde, LLC submitted an application on April 17, 2017, seeking a Status Decision under the Delaware Coastal Zone Act ("CZA;" Chapter 70 of Title 7 of the Delaware Code) to determine if a Coastal Zone Act Permit is required to replace an existing air separation unit with a new, more efficient unit.

Description of the Project

The facility is, and will continue to be, used to separate nitrogen and oxygen from ambient air. The ambient air is compressed, purified and cooled to remove moisture, carbon dioxide, and hydrocarbons. The process air is liquefied and the components are separated by cryogenic distillation.

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The existing equipment is being replaced with new, more efficient equipment. The upgrade will result in no change in area occupied by the facility and no change of emissions to the environment. The new equipment will enhance the operational efficiency and reliability of the facility.

The equipment is run on electricity, obtained from the PJM grid system; no electricity is produced on-site. Refrigeration equipment contains R-134A refrigerant and is in a sealed system. There will be no new or changed air or water emissions. Wastewater, consisting of atmospheric condensate and periodic discharge from the cooling towers, is discharged to the New Castle County sewage collection system for treatment. The other discharge is ambient air with diminished concentrations of oxygen and nitrogen. Water required for the air separation process comes from make-up water for the cooling tower; the water is supplied by United Water of Delaware (Suez).

Project Analysis

There are three possible outcomes from an application for a CZA Status Decision: 1) the proposal is deemed a “heavy industry,” and the applicant is barred from undertaking that activity in the Coastal Zone; 2) the activity is allowable and requires a CZA permit; and 3) the activity is not regulated; therefore, no Coastal Zone permit is required.

Maintenance and repair of existing equipment and structures (Section 5.14) and installation and modification of pollution control and safety equipment for nonconforming uses within their designated footprint (Section 5.16) are examples of uses that are not regulated by the Regulations Governing Delaware’s Coastal Zone.

Public Commentary


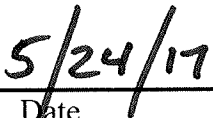
A legal notice announcing receipt of the Status Decision application was published in the News Journal and in the New Castle Weekly on April 26, 2017. No comments were received from the public.

Recommendation

The Coastal Zone Regulations specify that new activities that may result in a negative impact on the environment, economy, aesthetics, etc. require a permit (7 Del C. Admin Sec. 101-6.0). Conversely, activities that do not constitute initiation, expansion, or extension of heavy industry or manufacturing uses do not require a permit. Specifically, “replacement in-kind of existing equipment” does not require a permit (7 Del C. Admin Sec. 101-5.15; In-kind is not specifically defined by the regulations). Also, “installation ... of pollution control and safety equipment for nonconforming uses within their designated footprint” does not require a permit (7 Del. Admin Code Ch. 101 at §5.16).

The updated equipment simply improves the efficiency and reliability of the facility. The proposed project will not have any negative impact on the environment, economy, or aesthetics. Similarly, nothing about the project changes the type or capacity of production. The updated equipment will be constructed within the existing facility footprint and will not increase any emissions or pollution. In short, there are no negative impacts from this project.

Based on the analysis of program staff and the Deputy Attorney General assigned to represent the Department with respect to matters arising under the Coastal Zone Act in an e-mail dated May 4, 2017 (see attached), a Coastal Zone Act permit is not required for this project because the proposed activities constitute "replacement in kind" and are therefore not regulated by the Coastal Zone Act.

Approved, Shawn M. Garvin, Secretary Date

